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Supreme Court, U.S.
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No. _____

In The

Supreme Court Of The United States

OCTOBER TERM, 1993

JAMES H. NADEAU,
Petitioner,

v.

C. MICHAEL BUDLONG and
THE STATE OF CONNECTICUT,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT
FROM THE SUPREME COURT OF THE
STATE OF CONNECTICUT

PETITION FOR A WRIT OF CERTIORARI

JAMES H. NADEAU
Petitioner
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QUESTION PRESENTED

May the State of Connecticut, in a civil action wherein a pro se defendant is found by the trial court to be incapable of reasonably hearing the trial proceedings due to a hearing handicap, deny his request for permission to employ a "hearing" assistant during trial?

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OFFICIAL OPINIONS BELOW

The official opinion of the Appellate Court of the State of Connecticut in the case of C. Michael Budlong v. James H. Nadeau is reported at 30 Conn. App. 61.

The official decree of the Supreme Court of the State of Connecticut denying certification is reported at 225 Conn. 909.

Both decisions are reprinted in the Appendix attached hereto.

JURISDICTIONAL STATEMENT

1. The petitioner seeks review of the denial of certification from the Supreme Court of the State of Connecticut dated February 24, 1993.

2. Petitioner submits that 28 U.S.C. 1257 (3) confer jurisdiction on this Court to review the decree of the Supreme Court of the State of Connecticut denying certification to the petitioner.

CITATION OF APPLICABLE PROVISIONS

1. Art. IV, Section 2, of the United States Constitution.

2. The Ninth Amendment to the United States Constitution.

3. Section 1 of the Fourteenth Amendment to the United States Constitution.

The above provisions are reprinted in the Appendix.

STATEMENT OF THE CASE

Petitioner was sued in Connecticut superior court for libel. Respondent, C. Michael Budlong, his former lawyer, received a ten thousand dollar jury verdict. At outset of trial the court found the pro se petitioner to be hard-of-hearing and required a hearing assis-

tant. The judge allowed petitioner to have a friend at his table to assist him as to what was said at trial. Mid-way through trial the court told petitioner to put his examination of a witness in the form of questions and not statements. The court overheard the hearing assistant say "put that in question form" and ejected her from petitioner's table stating that she was giving petitioner legal advice and she was not an attorney. Petitioner requested her return or permission to have another friend provide "hearing" assistance, and the court denied his requests stating that the privilege had been abused because the original assistant was giving legal advice when she stated "put that in question form." For the second half of the trial petitioner pro se had no one at his table to assist him in "hearing." From

time to time he complained to the court that he could not hear the proceedings.

Petitioner appealed to the Connecticut Appellate Court claiming that his right to due process under the United States Constitution had been deprived by the trial court because after the court found that he could not hear the proceedings it denied his request to be permitted someone to assist him in "hearing." Petitioner claimed, and the Appellate Court of Connecticut did not dispute his claim, that the trial court never reversed its original finding that he was hard-of-hearing and required a "hearing" assistant. The Appellate Court decision affirming the trial court's ruling stated that: "...the trial court acted in such a way as to prevent the unlicensed practice of law from occurring in its courtroom

under the guise of hearing assistance. This action was properly within the trial court's discretion." Budlong v Nadeau, 30 Conn. App. 61,67; cert. den.225 Conn. 909.

The petitioner petitioned the Supreme Court of the State of Connecticut for certification which was denied on February 24, 1993.

REASONS FOR GRANTING THE PETITION

This case presents a question of special and fundamental importance to the just and fair resolution of civil actions in state and federal courts involving millions of physically handicapped defendants who are incapable of securing legal counsel to defend them at trial. This vast and growing citizenry deserves and requires the resolution of an important question of constitutional law which has not been,

but should be, settled by this Court.

In this case, the Supreme Court of the State of Connecticut has affirmed a fundamental decision by its lower courts that strikes at the very heart of millions of physically handicapped defendants' constitutional right to defend themselves, without counsel, against civil actions brought against them. The practical effect of the State of Connecticut's decision in this case has consequences for millions of other physically handicapped defendants, in all states, who cannot secure legal counsel in civil actions brought against them, and who are determined by the trial court to be physically incapable of reasonably hearing or seeing what is taking place in the courtroom at trial.

As a consequence of the State of Connec-

ticut's published Appellate Court decision and its Supreme Court's denial of certification in this case, the case-law of Connecticut stands for the proposition, and would be argued by it before this Court if certiorari is granted, that Connecticut's trial courts possess the discretionary authority to deny "hearing" or "seeing" assistance to unrepresented physically handicapped defendants in civil actions notwithstanding the trial court's prior and unchanged determination that those defendants are incapable of reasonably hearing or seeing what is taking place in the courtroom at trial, due to such physical handicap, and need such assistance.

This case presents a substantial due process question directly affecting all pro se hearing and sight handicapped

defendants in all states' courts and federal courts, not merely Connecticut's.

This Court should settle any doubt that the decision by the State of Connecticut in this case is unconstitutional. That if a trial court makes a determination, as it did in this case, that a pro se defendant requires a "hearing" assistant in order to "hear" the trial proceedings; and if it never alters that finding thereafter; then it is not within that court's discretionary authority to deny such assistance if it is requested by the handicapped pro se defendant.

This Court should settle the fundamental question as to whether it is the constitutional right of every pro se defendant in a civil action brought against him, to be permitted a "hearing" assistant if he requests one, after it has been determined

by the trial court that he needs one in order to "hear" or be advised what is being said in the courtroom at trial.

Petitioner did not claim at trial, or in his appeal, that he is entitled to have a "hearing" assistant provided to him. Neither does he make that claim to this Court. He may furnish his own assistant who acts under the supervision of the trial court, and who may be discharged and replaced at the trial court's discretion.

In criminal trials in all states' courts and federal courts, including Connecticut state courts, prosecutors are permitted non-lawyer assistants to sit at or near their counsel table and communicate with the prosecutors during the trial proceedings. Trial courts rarely, if ever, supervise the substance of those communi-

cations. Rarely, if ever, are those non-lawyer assistants removed by the courts. No court has ever held that communication between a prosecutor and his non-lawyer assistant is illegal because the assistant might be furnishing "legal advice" to the prosecutor. Physically handicapped pro se defendants in civil actions who are determined by the trial court to be hard-of-hearing and in need of a "hearing" assistant in order to know what is being said in the courtroom during trial are constitutionally entitled to the equal protection of the laws that permit non-lawyer assistants to communicate with state prosecutors during criminal trials in Connecticut state courts.

It is vital that the herein question be settled by this Court in the interest of physically handicapped citizens who may be

sued and be incapable of obtaining legal counsel, and will be unable to know what is taking place in the courtroom during trial because of their physical handicap.

Without this Court's review and reversal of the State of Connecticut's decision in this case, those handicapped citizens will be deprived, under this now existing case law, of their fundamental right to due process of law.

CONCLUSION

Based upon the reasons stated herein, the Petition For A Writ of Certiorari should be granted.

Respectfully submitted,

James H Nadeau

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C. MICHAEL BUDLONG *v.* JAMES H. NADEAU (10612)

LAVERY, FREEDMAN and SCHALLER, Js.

The pro se defendant appealed to this court from the trial court's judgment in favor of the plaintiff attorney following a jury trial on both the plaintiff's action for libel and the defendant's counterclaim for legal malpractice. *Held:*

1. The trial court did not abuse its discretion in admitting certain evidence that was not referred to in the complaint; the defendant failed to object to that evidence at trial.
2. The defendant's unpreserved claim that the trial court improperly instructed the jury was unavailing; the instructions given were correct.
3. The trial court did not abuse its discretion in refusing to permit the defendant to be coached by a nonlawyer at counsel table under the guise of providing hearing assistance.

Argued November 4, 1992—decision released January 19, 1993

Action to recover damages for alleged libel and slander, and for other relief, brought to the Superior Court in the judicial district of Hartford-New Britain at Hartford, where the defendant filed a counterclaim for legal malpractice; thereafter, the matter was tried to the jury before *Koletsky, J.*, judgment for the plaintiff on the complaint and on the counterclaim, from which the defendant appealed to this court. *Affirmed.*

James H. Nadeau, pro se, the appellant (defendant).

Kathleen A. Murrett, with whom was *Steven R. Dembo,* for the appellee (plaintiff).

LAVERY, J. The pro se defendant appeals from the trial court's judgment for the plaintiff following a jury trial on both the plaintiff's action for libel and the defendant's counterclaim for legal malpractice. The defendant claims that the trial court (1) improperly allowed the jury to consider evidence that was not referred to in the complaint, (2) improperly instructed

the jury regarding a number of issues, and (3) generally deprived him of a fair trial. We affirm the judgment of the trial court.

The jury could reasonably have found the following facts. In February, 1988, the defendant contacted the plaintiff to retain legal services in an action for dissolution of marriage. At the time the plaintiff began representing the defendant, a contempt motion against the defendant was pending due to an alimony arrearage owed by the defendant. The attorney-client relationship between the plaintiff and defendant began to deteriorate by the spring of 1988, when the defendant refused to follow the advice of the plaintiff regarding the contempt motion. The plaintiff notified the defendant that he would be withdrawing his appearance with regard to the contempt motion, and the defendant then filed a pro se appearance.

At a hearing on June 28, 1988, the defendant appeared pro se and agreed before the court to an arrangement whereby the attorney for the defendant's wife would be a court-appointed trustee over certain of the defendant's bank accounts to ensure the defendant's payment of alimony to his wife. After that hearing, the defendant contacted the plaintiff and asked him to remain as his attorney in the divorce action. The plaintiff agreed to this, but the defendant soon decided that he was dissatisfied with the representation provided by the plaintiff. On or about October 31, 1988, he began picketing outside the judicial district courthouse at 95 Washington Street, Hartford, wearing a sandwich board that said in large letters: "Christopher Storm [the defendant's wife's attorney] is a liar and a thief C. Michael Budlong is helping him." The plaintiff continued to picket the courthouse until jury selection began for this case in the trial court. The defendant's car, which he would often park in front of the courthouse during this period, had signs taped to

it that said, "Christopher Storm is a liar and a thief C. Michael Budlong is helping him" and "Honest Lawyer wanted to sue Igor Sikorsky and C. Michael Budlong for unethical law practice Call Jim Nadeau 951-8966."[1] The defendant also posted signs the size of business cards in the courthouse bearing the "Honest Lawyer" message, and an eight and one-half by eleven inch sign bearing similar allegations against the plaintiff.[2]

Subsequent to the defendant's commencing his picketing, the plaintiff filed and was granted a motion to withdraw his appearance for the defendant in the action for dissolution of marriage. The plaintiff then started an action against the defendant in libel, and the defendant filed a counterclaim for malpractice.

During the trial, the defendant failed to object at any time to the admission of evidence regarding the signs on his car, or to the admission of the business card signs.[3] In fact, the defendant himself admitted into evidence, over the objection of the plaintiff, a sign that contained a number of allegations regarding Budlong and Sikorsky, and the message that was printed on the business card signs.

"Our rules of practice make it clear that counsel must object to a ruling of evidence, state the grounds upon which objection is made, and take exception to the ruling to preserve the grounds for appeal." *State* v. *Lizotte*, 200 Conn. 734, 742A, 517 A.2d 610 (1986);

[1] On appeal, the defendant claims that the trial court improperly allowed the jury to consider evidence concerning the picketing after October 31, 1988, and the signs on the defendant's car because those issues and supporting evidence were not mentioned in the plaintiff's complaint. The defendant's claim is considered in this opinion.

[2] The defendant himself offered the larger sign into evidence, and it was admitted.

[3] A review of the trial transcript for August 13, 1991, reveals that the court directly asked the defendant if he had any objection to the admission of evidence regarding the signs on the car and the business card sized signs. Each time the defendant said, "No."

Practice Book § 288. "Because the defendant failed to except to the trial court's ruling and because the defendant does not seek review under the bypass rule of *State* v. *Evans*, 165 Conn. 61, 70, 327 A.2d 576 (1973), as reformulated in *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989); see *Adolphson* v. *Zoning Board of Appeals*, 205 Conn. 703, 716, 535 A.2d 799 (1988); *Hurtado* v. *Hurtado*, 14 Conn. App. 296, 300, 541 A.2d 873 (1988) (applying *Evans* rule to civil cases); we decline to review this claim."[4] *Capitol Restorations Corporation* v. *Construction Services of Bristol, Inc.*, 25 Conn. App. 681, 686–87, 596 A.2d 927 (1991).

As the defendant correctly points out, the business card signs and the car signs were not mentioned in the plaintiff's complaint. The complaint merely alleged that the defendant picketed the courthouse with a sign that said "Christopher Storm is a liar and a thief C. Michael Budlong is helping him" on October 31, 1988, and particular dates in November of that year. Since the defendant failed, however, to object to offers of evidence beyond the scope of the complaint, he cannot now allege that the trial court improperly allowed the proffered evidence to go before the jury. "The trial court has broad discretion to determine both the relevancy and remoteness of evidence, and its rulings on evidentiary matters will be set aside on appeal only

[4] We note that in the last sentence of the defendant's brief *State* v. *Evans*, 165 Conn. 61, 70, 327 A.2d 576 (1973), is apparently mentioned. That sentence says, "Defendant was deprived of his Constitutional Right to a fair trial, and all errors, under *Evans*, are plain and harmful." The defendant is probably referring to the *State* v. *Evans* we cited above, regarding reviewability of unpreserved claims, but we are no means certain of this because of the citation form used. This reference to *Evans* is also located in a section of the defendant's brief that discusses only his claim that he was deprived of a fair trial. We review that claim later in this opinion. Finally, a claim that is stated but not briefed is deemed abandoned. *State* v. *Tanzella*, 28 Conn. App. 581, 602, 613 A.2d 825 (1992). The plaintiff did not properly brief an *Evans* claim in any part of the brief; therefore, we are not compelled to determine reviewability under *Evans*.

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upon a showing of clear abuse of discretion." *Henry* v. *Klein*, 15 Conn. App. 496, 500, 545 A.2d 575 (1988). We find no such abuse of discretion by the trial court in this case.

The defendant next claims that the trial court improperly instructed the jury in several respects. Again, the defendant failed to preserve this issue properly for appeal. The defendant made no written request to charge, and took only a general exception to the jury instructions.[5] "In order to preserve full appellate review of a jury charge assigned as error, an appellant must not only move to set aside the verdict; *Small* v. *South Norwalk Savings Bank*, 205 Conn. 751, 758, 535 A.2d 1292 (1988); but must also set forth, either in the motion itself, in supporting briefs, or in oral argument at a hearing held on the motion, each claim of error with sufficient specificity to enable the trial court to consider the claimed errors." *Cuartas* v. *Greenwich*, 14 Conn. App. 370, 374, 540 A.2d 1071, cert. denied, 209 Conn. 803, 548 A.2d 436 (1988). Since the defendant did not preserve his claim that the trial court improperly charged the jury, we are limited in our review to whether the trial court committed "plain error."[6] Practice Book § 4185.

[5] At trial, after the court gave the defendant a detailed explanation of the jury instruction process, and the respective rights of the parties' during that process, the following exchange occurred:

"The Court: (to the defendant) . . . Do you have any exceptions to the charge that I gave? . . . I mean, you've got to tell me, to preserve this for appeal, you've got to say, this is what you did wrong, this is what you should have done. And I ask you to do it now.

"Mr. Nadeau: And then I say—I say I have an exception?

"The Court: Sure. I'll give you an exception. . . . Anything else you wish to say, sir?

"Mr. Nadeau: I'll leave it up to you, Your Honor."

[6] In *Schaffer* v. *Schaffer*, 187 Conn. 224, 227-28 n.3, 445 A.2d 589 (1982), our Supreme Court said: "Although as a general matter the rules of evidence and of the court are to be liberally applied to pro se litigants, we cannot go so far as to ignore entirely the requirement that a party's claims

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Plain error "is reserved for truly extraordinary situations where the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings." (Internal internal quotation marks omitted.) *Cuartas* v. *Greenwich*, supra, 375. The trial court's charge to the jury was detailed, comprehensible to a reasonable juror, and correct in law. The charge was not only free of plain error, it contained no error.

The defendant's final claim is that the trial court did not conduct a "fair" trial. Specifically, the defendant claims that the court erred when it removed from the counsel table a person the defendant described as a hearing assistant. At the opening of the trial, the defendant requested that, because he has some difficulty hearing, he be allowed to have a friend repeat things said during the course of the trial, or write things down for him. The court, upon determining that the defendant had a hearing problem, allowed the assistant to sit with the defendant at the counsel table, provided that she follow strict guidelines. She was only permitted to repeat things to the defendant that were said in court, or write things down. On several occasions, the court admonished the defendant's friend for coaching the defendant when the court overheard comments that were not mere repetitions of what was said. Eventually, the court ordered the assistant to leave the counsel table when she refused to heed its warnings. The court did not allow another assistant, noting that the defendant had abused the privilege of being allowed one.[7]

must first be presented to the trial court before they may be reviewed on appeal." This principle applies to the defendant's claims regarding evidence and the jury instructions in this case.

[7] We note that our review of the transcript reveals that the defendant did not seem any less aware of what was being said and what was transpiring in the courtroom after the removal of his assistant. We also note that on numerous occasions during the course of the trial the court asked

The actions taken by the court were clearly within its discretion. "The trial court is vested with a large discretion over matters occurring in the conduct of the trial. While this is a judicial discretion and therefore subject to some degree of review and control, its exercise will not be interfered with unless it has been clearly abused to the manifest injury of a litigant." (Internal quotation marks omitted.) *Connecticut Light & Power Co.* v. *Kluczinsky*, 171 Conn. 516, 521, 370 A.2d 1306 (1976). "The control of the order of the courtroom is necessarily within the discretion of the trial court, and unless abused cannot be reviewed." *Antel* v. *Poli*, 100 Conn. 64, 69, 123 A. 272 (1923). Here, the trial court acted in such a way as to prevent the unlicensed practice of law from occurring in its courtroom under the guise of hearing assistance. This action was properly within the trial court's discretion.

The defendant has also raised general claims as to the fairness of his treatment by the trial court. "This court has always been solicitous of the rights of pro se litigants and, like the trial court, will endeavor to see that such a litigant shall have the opportunity to have his case fully and fairly heard so far as such latitude is consistent with the just rights of any adverse party." *Conservation Commission* v. *Price*, 193 Conn. 414, 421 n.4, 479 A.2d 187 (1984). The trial judge in this case complied fully with the policy of our courts concerning pro se litigants. Our review of the trial transcript revealed that the court was solicitous, fair, and extremely patient throughout the course of the trial.

The judgment is affirmed.

In this opinion the other judges concurred.

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the defendant if he heard and understood what was being said, and asked opposing counsel and witnesses to speak loudly and clearly so that the defendant could hear them.

C. MICHAEL BUDLONG *v.* JAMES H. NADEAU

The defendant's petition for certification for appeal from the Appellate Court, 30 Conn. App. 61 [AC 10612], is denied.

James H. Nadeau, pro se, in support of the petition.

Kathleen A. Murrett, in opposition.

Decided February 24, 1993

CONSTITUTION OF THE UNITED STATES

ARTICLE IV, SECTION 2

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

(Balance of Section 2 is omitted.)

CONSTITUTION OF THE UNITED STATES

NINTH AMENDMENT

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

CONSTITUTION OF THE UNITED STATES

FOURTEENTH AMENDMENT, SECTION 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.